QIKJS-Part.III.H

Qualitative Inquiry of Korean Judicial System

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A Part One of Research Plan

The Problem Statement

The public administration of Korean judicial system affects the liberty and social justice that the public are bestowed as a matter of national constitution. Therefore, it is necessary to understand how the policy makers and interest groups act, process and interact to shape the national policy in this area, and to explicate the phenotype and characteristic of policy process as well as public administration of Korean judicial system (PAKJS) for cohesive understanding in terms of public policy elements. The current literature lacks or understudied the policy side analysis of Korean judicial system although the legal studies and discussion of legal theory flourished. This seriously brings a gap in literature while the studies of public policy have turned to be more scientific within an expanded scope of policy areas. Since the new born republics including Korea generally had to be hurried to import the western judicial system, no naturalization process had occurred leading to the public disagreement of PAKJS (Han, 2014; John, 2013). While varying with the successive administrations and public pressure, the current policy confrontation and lack of policy side understanding truly are an authentic puzzle that should be resolved with the empirical studies through the GT approach.

The Purpose of Study

By undertaking the research on PAKJS, we can have a better national and world view of policy makers and administrators interested in the judicial policy or formulating and reforming the judicial system. The studies will provide a phenotype, in terms of philosophies and bureaucratic tradition that has occurred over the history of Korean judicial system and constitutional democracy (Corbin & Strauss, 1990; 2013).[1] Provided that the studies will

[1] In this scope of definition on the extent of focus, the PAKJS encompasses a wide scope of policy arena including the constitutional reform beyond the reform of statute, regulation and executive order. It also does not rule out, in its scope of dealings, the analysis of informal or organizational sphere of actors and interest or stake holders. Therefore, the subject scope of PAKJS complies with the largest extent of policy studes, which, however, is not unusual with the routine attitudes or ways of approach of scholars in this discipline.

employ the grounded theory approach, it is less meaningful to situate the research work within any definitive theoretical frameworks. Nevertheless, I will be indebted to the intellectual heritage through the preliminary exposure to two theories, PET and DOI, which allows the perspective and basic ideas of public administration as well as lens of constant comparison with the western paradigm of understanding involved with the disciplinary goals of PPA (Monette, Sullivan & DeJong, 2013). Through study, I will explain process, action, or interaction of PAKJS, and generate a theory for cohesive understanding of phenotype and meanings.[2] The policy makers on the field and scholarly literature about the PAKJS deal with the topic making a focus on the utility and practical points of strengths and weaknesses, which have not researched or under-researched the common element of phenomenology inherent in the PAKJS.[3] This generate an important knowledge gap, current version of dissidence, and unproductive and resilient progress of agendas and programs, as well as create a contending public response of many already implemented policies for the transformation or reform of judicial system. The purpose of this study, therefore, is intended to provide a cohesive view of Korean history and phenomenology of PAKJS on the elements and thoughts of philosophy and public policy.[4] I hopefully envisage an extensive use of this theory for the comparative analysts and researchers, who are interested in the characteristics of PAJS varying with the political, economic, social, philosophical status of nations as well as culture and history.

The Research Questions

What are the experiences of formerly and currently influential policy makers over history and through various policy side issues of PAKJS?

How do we properly understand the major phenomena or events in terms of significant periods of policy transformation?

How do we properly understand the phenotype and meaning of PAKJS?

A Defense for the Choice

Let me briefly present two rationales, as general and particularly with its linkage to the PPA discipline, to support my choice of the topic, as well as the ways of framing the purpose

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[2] According to Creswell, the GT researcher begins independently from and as unaffected with the mainstream of knowledge, and the data analysis will be exhaustive and reiterative through the collected data. The open coding will yield one category of the focus of theory, and axial coding will enable to form a theoretical model. The selective coding could delineate the intersection of the categories what we call a theory.

[3] Therefore, the open coding can orient the focus of studies, such aspect as to reveal the national particulars and common elements within the trajectory of KJS beyond the agenda and issue specific focus of current literature.

[4] The researcher needs to hold a care so that the deals should not be bloated or miniscule. This misfeasance often would arise from the mistake as averted from the theme and focus than the extended time span of research coverage.

and research questions.

While the judicial branch or system is regarded as a bulwark of human rights protection and modern democracy, the intellectual approach was regrettably limited in view of public policy and administration (Kim, 2014;2015a,b). The concern and interest tend to be constrained on the studies of law, and parochial with their own narrative of legal theory and justice. That is because the characteristic of innovations are conservative and constitutionally structured while the actors or stakeholders are simply the deliberator of justice rather than the public administrators. As the pluralism of society progresses, the judicial system has gradually been viewed in other perspective that the essences and elements of public policy can be a factor to give a scholarly dose for its character and identity (Baumgartner, 2013; Wejnert, 2014). That is particularly because those past assumptions are not only with the actors of judicial system, but also with the players of policy makers. As said, the problem would be exacerbated since the professionalism – often resilient and conservative and a culprit of those parochial assumptions -- would be shared along the tripartite branches with the intra-governmental policy network (Bhatti, Asmus & Pedersen, 2010). In this crippling environment of system, the lacking or limitations of literature on the cohesive theory of PAKJS generally militate against the universality of understanding the process, action, and interaction of PAKJS based on the scientific frames, terms and concepts. In other words, the current world of policy makers and scholarly community on this topic can well be viewed as some of already determined or ideological scratch of issues and agendas, which is seen to contribute to the current disagreement on the PAKJS and unproven or even fragmented assertion from the scholarly critiques. From the distinctness of Korean judicial system as an object of research, the pattern of phenomenon cognizable with the implications of judicial policy would be somewhat distinguishable, which created the background of this study.

The topic needs to be relevant and suited with the discipline of public policy and administration. One article had an interest in this concern, which made a point by arguing on the new partnership between the law and public policy (Birkland, 2014). The author pointed out a feasibility of adaptation in response with the emergence of the contemporary administrative state. The partnership has been reinforced with the backdrop of greater constitutional protections and development of administrative law. The argument and proposition would be one important lens to investigate the process and ideological critiquing of the major agendas of judicial reform. For example, the law school system, as a unique avenue for the qualification of lawyer, is being continually challenged and disputed involved with the equal protection of laws and basic right to public office or occupation (Han, 2014). We can phase in two areas of interplay between law and public policy provided that the policy reform toward the American mode of legal education had been designed and enforced as a matter of national globalization plan by the policy makers of the government and civil group as well as public opinion leaders. Hence the narrative is grounded on the terms and phrases of two disciplines. My dissertation topic is fairly oriented to the theme of judicial reform. In the article dealing with the reform of personnel practices, the authors examined the extent of implementation concerned of the personnel reforms by the state governments (Nigro, Nigro & Kellough, 2013). The reform index is helpful that the author documented to illustrate the level of unemployment, which is useful to consider the Korean issues (2013). While the judges or lawyers may not be an employee in strict terms of Korean unionism, the organizational turf or concept of vested rights fairly had been a negative element against the reform of their staffing

or qualification endorsement practice. For example, the bar association can be seen a quasi-labor union although it is a voluntary association, and the basic tone of judiciary in personnel practice largely has long been insulated from the concurrent sensibility of public. That impedes a progressive reform on this agenda. For example, the recruitment of new lawyers had long been shackled in small number by the influence of bar association. The diversification about the background and ideology of justices in the process of selection often had not been satisfactory against the wishes and public anticipation. While the communitarianism as an agent of policy philosophy is not certain which path is more solid with the Korean community, the staffing practice generally had been and currently is being a usual subject of public skepticism. Although the law school reform had been implemented years ago and earned some ground as a public institution, the current issue remains to be testified if it should be a sole avenue to crown the qualification as a lawyer (Han, 2014).

References

Baumgartner, F. R. (2013). The theory and policy making, and transformation. *Governance* 26 (2), 239–258.

Bhatti, Y., Asmus L. O. & Pedersen, L.H. (2010). Law and public policy on the citizen service centers. *Administration in Social Work* 35(1), 3-19.

Birkland, T.A. (2014) *The theories and concepts of policy process, and paradigm of public administration*. New York. NY: Springer.

Corbin, J. & Strauss, A. (1990). Understanding of the thought and process of grounded theory research, *Qualitative Sociology* 13(1), 3-21.

Han, S.H. (2014). Judicial reform-concerning Korean experiences. *Journal of Democracy,* 8, 52-69.

John, P. (2013). *Analyzing public policy*. New York. NY: Routledge.

Kim, Kiyoung, Ethics, Law and Social Justice (April 10, 2015a). Available at SSRN: https://ssrn.com/abstract=2592876 or http://dx.doi.org/10.2139/ssrn.2592876

Kim, Kiyoung, Public Policy and Governance: Some Thoughts on Its Elements (April 3, 2015b). Available at SSRN: https://ssrn.com/abstract=2589526 or http://dx.doi.org/10.2139/ssrn.2589526

Kim, Kiyoung, The Relationship between the Law and Public Policy: Is it a Chi-Square or Normative Shape for the Policy Makers? (September 10, 2014). Social Sciences. Vol. 3, No. 4, 2014, pp. 137-143. doi: 10.11648/j.ss.20140304.15. Available at SSRN: https://ssrn.com/abstract=2577832

Monette, D., Sullivan, T. & DeJong, C. (2013). *A compact of applied social science research*, Stamford. CT: Cengage Learning.

Nigro, L., Nigro, F. & Kellough, J. (2013). *The new public personnel administration,* Stamford. CT: Cengage Learning.

Wejnert, B. (2014). *Policy diffusion and global democracy*. Cambridge University Press.